

Frequently Asked Questions about Proposition 65

Q: I recently bought a product that came with a Proposition 65 warning. How do I find out more about the warning and the chemicals in the product?

A: Businesses are not required to provide OEHHA with any information regarding their Proposition 65 warnings. To receive more information about the chemicals of concern and the levels of exposure related to a particular product's use, one should contact the manufacturer of the product. The decision to provide a Proposition 65 warning is made by the respective business based upon its knowledge of the types of chemical exposures it is responsible for causing to individuals. A business is not required to notify our office or any other regulatory agency when it decides to provide a warning.

Because we do not know why a business has chosen to provide a warning, we generally cannot respond to specific questions regarding the safety of a product's use, why a warning is being given, for which listed chemical the warning is being given, how long the chemical exposures have been occurring, and at what level a chemical exposure is occurring. The responses to these exposure questions should be obtained from the business.

The list of chemicals subject to Proposition 65 is available at http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Q: My landlord just posted Proposition 65 warning signs at my apartment complex. Why is my landlord posting these warnings?

A: Tenants should ask their landlords for specific information regarding Proposition 65 warnings at their apartment building. Property owners and managers are not required to notify OEHHA when or explain to us why they provide tenants with a Proposition 65 warning. You can find general information on what tenants should know about Proposition 65 by reading our fact sheet for tenants at: <http://www.oehha.ca.gov/prop65/background/P65ten.html>

Q. Is toxic mold subject to the requirements of Proposition 65?

A. No. Toxic mold is not subject to Proposition 65. The Department of Health Services (DHS) is the lead state agency concerning the regulation of mold. DHS has published a fact sheet on toxic mold in homes and it is available at http://www.dhs.ca.gov/ps/deodc/ehlb/iaq/Mold/MIMH_2004-06.pdf. Other information resources on toxic mold can be found at <http://www.dhs.ca.gov/ps/deodc/ehlb/iaq/iaqinfo-mold.htm>.

Q. Are any businesses exempt from Proposition 65?

A. Yes. Small businesses with less than 10 employees, governmental agencies, and public water systems are exempt from the warning requirement and discharge prohibition of Proposition 65. This is addressed in the definition for "person in the course of doing business" in section 25249.11(b) of the Health and Safety Code, which states, "'Person in the course of doing business' does not include any person employing fewer than 10 employees in his or her business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system as defined in Section 4010.1."

Q: Are governmental agencies exempt from the disclosure requirement under Proposition 65?

A: No. Designated governmental employees, as the term is used in Government Code Section 82019, are required to disclose illegal and threatened illegal discharges of hazardous waste to the local Board of Supervisors and the local health officer. Additional information about the disclosure requirement is available in a fact sheet at <http://www.oehha.ca.gov/prop65/background/P65Facts.html>.

Q: As a business, how do I know if I need to provide a Proposition 65 warning?

A: The statute states that "no person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state (California) to cause cancer or reproductive toxicity without first giving a clear and reasonable warning..." Based upon your knowledge of your business operations and chemicals used, you should review the Proposition 65 list at http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html and determine which chemicals would likely be involved in exposures to individuals.

OEHHA has established safe harbor levels (levels of exposure that trigger the warning requirement) for some, but not all, listed chemicals. Businesses that cause exposures greater than the safe harbor level must provide Proposition 65 warnings. These safe harbor levels are available in the June 2004 Status Report available at <http://www.oehha.ca.gov/prop65/pdf/June2004StatusRpt.pdf>. Over time, we expect to adopt additional safe harbor numbers as explained in the report.

If there is no safe harbor level for a chemical, businesses that knowingly expose individuals to that chemical would generally be required to provide a Proposition 65 warning, unless the business could show that risks of cancer or reproductive harm resulting from the exposure would be below levels specified in Proposition 65 and its accompanying regulations. Determining health risks is very complex, and we recommend that businesses consult a qualified professional if they believe an exposure to a listed chemical may not require a Proposition 65 warning.

Q: Can you send me the Proposition 65 signs that businesses are required to post?

A: We do not have Proposition 65 warning signs. Businesses are responsible for providing clear and reasonable warnings. The form, content and suggested language for some Proposition 65 warnings can be found in regulation in Title 22, Cal. Code of Regulations, Section 12601 (http://www.oehha.ca.gov/prop65/law/pdf_zip/RegsArt6.pdf).

Q. What is the acceptable concentration in my product for chemicals listed under Proposition 65?

A. Under Proposition 65, there are no acceptable concentrations established for any listed chemical in any given product. An exposure that causes a significant risk of harm from a listed chemical through the use of a product would trigger the warning requirement, not merely the fact that a listed chemical is present in a product. The concentration of a listed chemical would certainly factor into the level of exposure that would result from an individual using a given product. But concentration alone is not sufficient to determine if warnings are required. (However, please see the final question below regarding a specific court settlement involving allowable concentrations of lead in tableware.)

Q: I am an importer of tableware/ceramicware/porcelain. What do I need to do to comply with Proposition 65?

A: Proposition 65 imposes a warning requirement if exposures to lead in tableware products exceed the safe harbor level of 0.5 micrograms per day. A settlement in the early 1990s between the California Attorney General's office and several tableware manufacturers established allowable leachable concentrations of lead at 0.226 parts per million (ppm) for flatware and 0.100 ppm for all other tableware.

In addition, OEHHA has established a safe harbor level for cadmium at 4.1 micrograms per day, and therefore any product causing cadmium exposures

exceeding that level would require a Proposition 65 warning. An allowable concentration limit has not yet been established for cadmium.

The following government agencies have general information about hazardous substances and tableware:

- The California Department of Health Services, Food and Drug Branch (state counterpart to the U.S. Food and Drug Administration) oversees the California Tableware Safety Law and offers information about lead exposures on its website at <http://www.dhs.ca.gov/childlead/tableware/twhome.html>.
- Environmental Defense, a non-profit organization, in cooperation with the State Attorney General's office, provides information concerning lead in tableware on its web site at <http://www.environmentaldefense.org/article.cfm?contentid=952>.
- The U.S. Food and Drug Administration (FDA) has levels established that govern the ability to market specific tableware in the United States. The FDA maintains a web site at <http://vm.cfsan.fda.gov/list.html>. Tableware must meet the FDA requirements before it can be sold in the United States.